

Singh argued that the magistrate was wrong in so doing "when no such evidence was led by the prosecution [at the retrial]". I have already held that the notes of Encik Ismail's evidence at the first trial were admissible under section 33 of the Evidence Act to prove the truth of the facts which they state.

In my judgment, the learned magistrate was in the circumstances right in holding that the accused had in the course of a trade or business applied false trade descriptions to these exercise books, and I would accordingly dismiss these appeals.

As regards sentences (a fine of \$4,000 or six months on each charge — totalling \$8,000), with respect I do not think that they were manifestly excessive or followed wrong principles. As the learned magistrate said, a deterrent sentence should make the defendants realize that the exploitation of the public, especially school children, must end.

As regards disposal of the exhibits, the learned magistrate ordered that the books admitted as exhibits be returned to the Ministry of Trade for disposal; I confirm that order.

The learned magistrate made no order regarding the books not exhibited. Presumably they are still in the custody of the Ministry or the police within the meaning of subsection (ii) of section 407 of the Criminal Procedure Code, in which event I order that they be forfeited to the Ministry if the number of pages in each book does not correspond to the figure printed on the outside cover. In fairness to the accused, they are given one month from today to check in the presence of Ministry officials the number of pages.

Order accordingly.

Solicitors: Jagjit Singh & Co.

**GOOPAN s/o GOVINDASAMY v.
A. SUBRAMANIAM & ANOR.**

[O.C.J. (Wan Hamzah J.) December 21, 1978]
[Kuala Lumpur — Civil Suit No. 746 of 1975]

Practice and Procedure — Limitation — Amendment of legislation to extend time for instituting action — Whether plaintiff could rely on amendment to extend time for his claim which had already been time-barred — Public Authorities Protection Act, 1948, s. 2(a) — Interpretation Act, 1967, ss. 3, 30(1)(b).

On September 19, 1972, the plaintiff sustained injuries as he fell off a tractor trailer driven by the first defendant for the purpose of being sent to work at a place in the course of the plaintiff's employment by the second defendant, the Government of Malaysia. At that time the Public Authorities Protection Act 1948 was in force and had not been amended. Section 2(a) of the said Act provides that the action should be brought within twelve months of the cause failing which it will be time-barred. On June 13, 1974 an amendment came into force amending the period of twelve months to thirty six months.

On May 15, 1975 the plaintiff commenced this action. He contended that the effect of the amendment to section 2(a) was to extend the time for instituting action in this case to thirty six months from September 19, 1972 (the date of the accident) and the last date for instituting action was on September 18, 1975, and since the writ was issued before September 18, 1975 it was issued within proper time.

A **Held**, dismissing the claim: (1) the amendment operates to extend the time for instituting proceedings in respect of future causes of action i.e. causes of actions which arise after the date of the coming into force of the amendment, and to extend the time for instituting actions which had not been time-barred at that date. It does not, however, operate to extend the time for instituting actions which had been time-barred at that date;

B (2) since the present action had already been time-barred before the amendment came into force, it was not affected by the amendment and it continued to be time-barred when the writ was issued on May 15, 1975.

Cases referred to:-

- (1) *K.K.K. Ramanathan Chettiar v. N.M. Kandappa Goundan* A.I.R. 1951 Mad. 314.
- (2) *N.M. Yousoff v. Teo Kai Tee & Anor.* [1953] M.L.J. 188.

C **CIVIL SUIT.**

David Tay for the plaintiff.

Lim Keng Seng (Federal Counsel) for both the defendants.

Cur. Adv. Vult.

D **Wan Hamzah J.:** When this action came up for trial on September 13, 1978 the learned Federal Counsel for the defendants raised a preliminary objection and argued that it was time-barred under section 2 of the Public Authorities Protection Act, 1948.

E On September 19, 1972 the plaintiff was being transported on a tractor trailer driven by the first defendant for the purpose of being sent to work at a place in the course of the plaintiff's employment by the second defendant, the Government of Malaysia. Whilst so travelling the plaintiff fell off the tractor trailer and suffered injuries. At that time the Public Authorities Protection Act, 1948 was in force and had not been amended. At that time section 2(a) of the Act read as follows:—

F "2. Where, after the coming into force of this Act, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect—

G (a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof."

H Therefore if an action was to be brought against the defendants for alleged negligence in connection with that accident on September 19, 1972, the time for instituting such action would expire on September 19, 1973. On June 13, 1974 an amendment to section 2(a) of the Act came into force, whereby the words "twelve months" therein should now read "thirty six months". On May 15, 1975 the plaintiffs commenced this action and the Writ was issued, whereby the plaintiff alleges negligence on the part of the defendants in causing him to fall from the tractor trailer. It was contended on behalf of the plaintiff that the effect of the amendment to section 2(a) is to extend the time for instituting action in this case to thirty six months from September 19, 1972 (the date of the accident) and the last date for instituting action is September 18, 1975 it was issued within proper time.

In my opinion the amendment operates to extend the time for instituting proceedings in respect of future causes of actions, i.e. causes of actions which arise after the date of the coming into force of the amendment, and to extend the time for instituting actions which had not been time-barred at that date, but does not operate to extend the time for instituting actions which had been time-barred at that date. This must be so because section 30(1)(b) of the Interpretation Act, 1967 provides that the repeal of a written law in whole or in part shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law. Under section 3 of the Interpretation Act, 1967 "repeal" includes "replace", and therefore section 30(1)(b) of the Interpretation Act, 1967 applies to the amending provisions replacing the words "twelve months" with "thirty six months" in section 2(a) of the Public Authorities Protection Act, 1948. The amending provisions do not affect the right already acquired by the defendants to invoke immunity from the proceedings in this case after one year from the date of the accident. The amending provisions do not affect the plaintiff's right to sue which he had acquired and lost. Since this action had already been time-barred before the amendment came into force, it was not affected by the amendment and it continued to be time-barred at the time when the Writ was issued on May 15, 1975.

In my opinion to hold that the amendment applies to actions which had been time-barred at the time of its coming into force would create an anomalous situation and give rise to confusion. There might be claims which had been dismissed by the court before the introduction of the amendment, on the ground that they were brought after the expiry of one year after the causes of action had arisen, and three years might not have expired at the time of the institution of the proceedings. Is it suggested that after the introduction of the amendment the plaintiffs whose claims had been so dismissed, can ask the court to set aside the dismissal? On the other hand if such plaintiffs were not to be allowed to pursue their claims which had been so dismissed, there would be discrimination against such plaintiffs in favour of the plaintiffs who bring their actions after the introduction of the amendment and within three years from the date when their causes of action arose but whose claims had already been time-barred before the introduction of the amendment.

For my view I find support in the judgment in an Indian case, *K.K.K. Ramanathan Chettiar v. N.M. Kandappa Goundan*.⁽¹⁾ I quote hereunder the relevant passage in the judgment:

"We agree with Mr. N. Sivaramakrishna Aiyar, the learned advocate for the appellant, that the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding unless there is a distinct provision to the contrary. It is also well settled that the law of limitation being procedural law, its provisions operate retrospectively in the sense that they apply to causes of action which arose before their enactment. But on an examination of the authorities on the point, we find it equally well established that if a right to sue had become barred by the provisions of the Limitation Act then in force on the date of the coming into force of a later enactment, then such a barred right is not revived by the application of the new enactment. Section 2, Limitation Act, 1877, expressly provided as follows:

A 'A reference to the Limitation Act, 1871, shall be read as if made to this Act and nothing herein contained shall be deemed to affect any title acquired, or to revive any right to sue barred under that Act or under any enactment thereby repealed.'

B No doubt a similar provision is not found in the Limitation Act, 1908, but this is probably because of section 6(a) General Clauses Act, 1897, which embodies a similar provision. Apart from decided cases, it appears to follow on principle that the right of action barred by limitation at the time when a new Act or amendment comes into force cannot be revived by the subsequent change in the law brought about by the new Act or amendment. The preponderance of decided cases also leads us to the same conclusion. There is a long catena of Privy Council rulings in which we find the same principle enunciated."

C I am mindful of the judgment of Murray-Aynsley C.J. in the Singapore case of *N.M. Yousoff v. Teo Kai Tee & Anor.*⁽²⁾ It seems that in that case an amendment similar to the one in the instant case was taken as having effect to extend the limitation period which had expired before the amendment. However, the following passage appears in the judgment:

D "In view of this I think the plaintiff is entitled to succeed unless the Interpretation Ordinance (No. 4 of 1951) affects the situation. Section 14 was relied on by counsel for the second defendant. It is possible that the words of this section cover the situation of the second defendant after February 9, 1953, but in order to bring the second into operation there must be a repeal."

E The relevant provisions of section 14 of the Interpretation Ordinance, 1951 of Singapore were almost identical with the relevant provisions of section 30(1)(b) of our Interpretation Act, 1967, on which I have earlier relied. But it should be noted that there was no provision in the Singapore Ordinance defining "repeal" to include "replace". In my opinion the ruling in the Singapore case would have been different if the Singapore Ordinance had contained such definition.

F I uphold the learned Federal Counsel's objection and dismiss this suit. I make no order as to costs.

Claim dismissed.

Solicitors: *Murphy & Dunbar.*

G
**LIM CHO HOCK v.
SPEAKER, PERAK STATE LEGISLATIVE
ASSEMBLY**

[O.C.J. (Abdoolcader J.) January 22, 1979]
[Ipoh — Originating Summons No. 447 of 1978]

H *Constitutional Law — Speaker — Member of Legislative Assembly — Failure to take oath as member — Whether seat vacated — Legislative Assembly the final arbiter — Constitution of Perak, arts. XLVII (1) and (4), XXXIII and XXXIV — Federal Constitution, art. 72(1).*

I *Practice and Procedure — Originating summons — Application for declaration that seat of member of Legislative Assembly vacated — No question of construction involved — No locus standi — Proceedings incompetent — R.S.C. 1957, O. 54A r. 1A.*

In this case the applicant applied by Originating Summons for the determination of the question whether the seat of a member of the Legislative Assembly, who was also the Speaker, had been vacated as he had not taken the oath required of a member. The respondent applied to set aside the Originating Summons on the grounds *inter alia* (1) that the application was not maintainable in law and procedure and (2) that the court had no jurisdiction to entertain the application as the reliefs sought were exclusively within the jurisdiction of the Legislative Assembly of the State of Perak.